

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



November 15, 1990

ALL-COUNTY LETTER NO. 90-109

TO: ALL-COUNTY WELFARE DIRECTORS

SUBJECT: MINIMUM GUIDELINES FOR ELDER AND DEPENDENT
ADULT ABUSE INVESTIGATIONS

Attached is a copy of the revised Minimum Guidelines for Elder and Dependent Adult Abuse Investigation for use by County Adult Protective Services (APS) Agencies when a report of suspected elder or dependent adult abuse is received.

Minimum guidelines for adult abuse investigations were initially developed as required under Welfare and Institutions Code Section 15640 and sent to you in December 1986 (All-County Letter (ACL) 86-133). Also, technical revisions to the guidelines due to legislation were made in February 1988 (ACL 88-18).

The current revision to the guidelines was accomplished with consultation and input by the Counties, the Department of Justice, and the State Department of Aging. This revision also includes the latest revisions to the abuse reporting law as outlined in All-County Information Notice (ACIN) I-72-90, dated September 17, 1990.

Besides providing information on the statutory requirements of reporting abuse and agency responsibility for receipt and investigation of abuse reports, the revised guidelines provide a more comprehensive picture of the investigation process as well as greater detail of step-by-step activities in completing the investigation. Also, emphasis has been placed on coordination with other agencies through development of Memorandums of Understanding (MOUs) and identification of contact persons within each of these agencies. Special emphasis was given to coordination with local law enforcement agencies to assist those agencies in criminal investigation of suspected abusers.

You will note that the guidelines include, as part of the appendix, the complete elder and dependent adult abuse reporting law taken from the Welfare and Institutions Code. Other appendix materials were selected to assist APS staff in the identification and confirmation of abuse, and to provide easy reference to other investigative agencies.

Questions or comments regarding the Minimum Guidelines should be directed to Lucille Toscano of the Adult Services Branch at (916) 323-6340.



LOREN D. SUTER
Deputy Director
Adult and Family Services Division

Attachments

cc: CWDA

**California
State Guidelines
for
County Adult
Protective
Services
Abuse
Investigations**

STATE OF CALIFORNIA

MINIMUM GUIDELINES FOR
COUNTY WELFARE DEPARTMENTS
ADULT PROTECTIVE SERVICES
FOR
DEPENDENT ADULT AND ELDER
ABUSE INVESTIGATIONS

STATE DEPARTMENT OF
SOCIAL SERVICES

ADULT SERVICES BRANCH

JANUARY 1991

MINIMUM GUIDELINES FOR COUNTY WELFARE DEPARTMENTS
DEPENDENT ADULT AND ELDER ABUSE INVESTIGATIONS

I. GENERAL*

A. PURPOSE

These minimum guidelines have been revised by the State Department of Social Services (SDSS) in cooperation with representatives of County Welfare Departments (CWDs) for County Adult Protective Services (APS) agencies to use in determining when an investigation of dependent adult and elder abuse is required. Activities to be undertaken to complete an abuse investigation are also provided. These guidelines represent the minimal actions to be taken in determining the extent of the abuse. They also provide standard basic investigative procedures, and permit flexibility in providing for the health and safety of the victim. Additional information is included which should be of assistance in conducting abuse investigations, particularly in coordinating with law enforcement officials.

B. STATUTORY AUTHORITY AND BACKGROUND

The guidelines were initially established in 1986 in compliance with Welfare and Institutions Code (W&IC) Section 15640 (All-County Letter (ACL) 86-133). Revision of the guidelines is necessitated by enactment of Chapter 637, Statutes of 1987 (Senate Bill (SB) 526), Chapter 681, Statutes of 1989 (SB 223), Chapter 435, Statutes of 1990 (SB 2571), Chapter 241, Statutes of 1990 (SB 1911) each of which contain amendments to the dependent adult and elder abuse reporting law.

C. PRIORITY FOR INVESTIGATION

W&IC Section 15640 mandates the establishment of minimum guidelines for determining when an investigation of alleged abuse is warranted. While concerned individuals may have different views as to what situations warrant investigation, evaluation of the

*NOTE:-----
THESE GUIDELINES DO NOT ADDRESS THE DEVELOPMENT AND EXECUTION OF SERVICE ASSESSMENTS, CASE PLANS, AND INTERVENTIONS WHICH ARE GENERALLY THE RESPONSIBILITY OF APS UNITS AS PROVIDED UNDER W&IC 15750 - 15754 AND STATE DEPARTMENT OF SOCIAL SERVICES MANUAL OF POLICY AND PROCEDURES REGULATIONS DIVISION 30.800.

reported abuse using the criteria presented under "Response to Report of Abuse" in the guidelines, combined with the professional judgment of the social worker, will form the basis for a decision as to whether an investigation is warranted. Following such evaluation, the APS social worker priority of response shall be based on the immediacy and severity of the threat to the personal health and safety of the alleged victim.

D. REPORTS OF ABUSE/FOLLOW-UP

1. COUNTY APS

Under current legislation, County APS agencies receive and are responsible for follow-up on reports of abuse occurring outside of long-term care facilities. This includes reports of abuse of persons residing in private homes, hotels, acute care hospitals and health clinics, and adult day care and social day care centers. The Bureau of Medi-Cal Fraud and Patient Abuse, Office of the Attorney General, may be contacted for assistance in abuse investigations in acute care hospitals and health clinics.

If a County receives a report of abuse which is alleged to have occurred in a long-term care facility, the County is to immediately inform the reporter to make the report to the long-term care ombudsman program, or to a local law enforcement agency if appropriate; Counties shall not accept these initial reports. However, a County APS social worker may contact the local ombudsman program to relay any information related to the aforementioned reports. Also, County APS may accept requests from the ombudsman program for assistance in investigation of abuse in a long-term care facility.

a. Room and Board Residences

The County APS investigative responsibility extends to room and board residences. Whenever a suspected incident of abuse is reported to have occurred in a room and board residence, County APS is required to respond and investigate. If during the course of such investigation it appears the operators (and/or their designees) may be providing services to

the residents beyond room and board, i.e., residents are receiving care and supervision, APS investigative staff are to notify local community care licensing authorities, as the residence may be an unlicensed board and care facility. (A board and care facility provides assistance with one or more activities of daily living such as assistance in bathing, dressing, grooming, medication storage and/or dispensing, or money management.)

Further, if the APS investigator suspects that the residence is being operated as an unlicensed board and care facility as outlined above, and also, there is suspected abuse within the residence, the APS worker is to notify the local long-term care ombudsman program of the situation. Remember that the ombudsman has the legal capacity to enter an unlicensed or a licensed long-term care facility. However, it is possible that the local ombudsman may not participate in the investigation until required to do so, i.e., when the community care licensing agency declares the residence to be an unlicensed board and care facility. In any case, notification to the local ombudsman as stated above can afford added protection for the resident(s).

In the interim, the County APS should continue its investigation (perhaps in a joint investigation with the ombudsman) until protection is provided the resident(s) and the investigation is completed or taken over by another investigative agency, e.g., law enforcement, ombudsman, or Regional Center.

2. LOCAL LONG-TERM CARE OMBUDSMAN PROGRAM

Local long-term care ombudsman programs and local law enforcement agencies receive and are responsible for follow-up on reports of abuse occurring in long-term care facilities which includes nursing homes, residential care facilities, and Adult Day Health Care Centers. Nothing precludes a local long-term care ombudsman from reporting an incident of abuse which occurs in a long-term care facility to the County APS agency to obtain assistance in an abuse investigation if the victim gives consent for APS to be notified.

3. LOCAL LAW ENFORCEMENT AGENCIES

Local law enforcement agencies receive reports of physical abuse and are responsible for criminal investigation of physical abuse and any other conduct involving criminal activity whether in or out of long-term facilities. Also, the Bureau of Medi-Cal Fraud and Patient Abuse shares responsibility with local law enforcement for investigation (and subsequent prosecution) of potential criminal neglect in health care facilities.

E. STATUTE AND GUIDELINES FOR ABUSE INVESTIGATION

1. AN ELDER OR DEPENDENT ADULT MAY REFUSE OR WITHDRAW CONSENT TO AN INVESTIGATION OF ABUSE OR THE PROVISION OF PROTECTIVE SERVICES AT ANY TIME. IF THE ELDER OR DEPENDENT ADULT ABUSE VICTIM IS INCAPACITATED AND CANNOT LEGALLY GIVE OR DENY CONSENT, A PETITION FOR TEMPORARY CONSERVATORSHIP MAY BE INITIATED UNDER SECTION 2250 OF THE PROBATE CODE (W&IC 15650(a)(b)).
2. APS SHOULD PROCEED WITH THE INVESTIGATION OF A REPORT OF ABUSE ONLY WITH THE CONSENT OF THE VICTIM UNLESS THE REPORT ALLEGES AN ABUSE WHICH IS A VIOLATION OF THE PENAL CODE. (W&IC 15650(a)).
3. WHEN APS STAFF HAS REASON TO SUSPECT A CRIME MAY HAVE BEEN COMMITTED AND/OR THE REPORT ALLEGES A CRIMINAL VIOLATION SUCH AS DEFINED UNDER W&IC 15610(c) "PHYSICAL ABUSE," AND/OR VIOLATION OF PENAL CODE SECTION 368, OR ANY OTHER LAW VIOLATIONS, APS STAFF SHOULD REPORT THESE VIOLATIONS IMMEDIATELY TO A LOCAL LAW ENFORCEMENT AGENCY REGARDLESS OF WHETHER THE CLIENT GIVES CONSENT. APS IS REQUIRED TO IMMEDIATELY REPORT BY TELEPHONE TO THE LOCAL LAW ENFORCEMENT AGENCY ANY INSTANCE OF KNOWN OR SUSPECTED PHYSICAL ABUSE OF AN ELDER OR DEPENDENT ADULT FOLLOWED BY A WRITTEN REPORT WITHIN TWO WORKING DAYS.
4. APS ACTIVITIES FOLLOWING A REPORT TO LOCAL LAW ENFORCEMENT WOULD INCLUDE THOSE STEPS NECESSARY TO CONTINUE TO AFFORD THE VICTIM PROTECTION AND CONFIRM THE SUSPECTED ABUSE, BUT ONLY WITH THE VICTIM'S CONSENT AS IN NUMBER 1. ABOVE. IF THE VICTIM DOES NOT CONSENT TO APS INTERVENTION, THE SITUATION BECOMES ONE IN WHICH THERE IS A CRIMINAL INVESTIGATION ONLY BY THE LOCAL LAW ENFORCEMENT

AGENCY. CRIMINAL VIOLATIONS ARE THE INVESTIGATIVE RESPONSIBILITY OF LOCAL LAW ENFORCEMENT AGENCIES.

5. APS STAFF SHALL CONDUCT AN INVESTIGATION OF EACH REPORT OF ABUSE OCCURRING OUTSIDE OF LONG-TERM CARE FACILITIES, AND UNDERTAKE ALL ACTIVITIES NECESSARY TO DETERMINE THE VALIDITY OF A REPORT OF ELDER OR DEPENDENT ADULT ABUSE (W&IC 15635(a)).
6. AN APS WORKER, DURING THE COURSE OF INVESTIGATION CAN ASSIST LAW ENFORCEMENT IN ITS CRIMINAL INVESTIGATION BY:
 - OBTAINING THE VICTIM'S WRITTEN CONSENT FOR RECORDS
 - CONFIRMING DATE(S)/TIME(S) OF ABUSE
 - DOCUMENTING OF ALL STATEMENTS
 - TAKING PHOTOGRAPHS OF PHYSICAL ABUSE/NEGLECT
 - OBTAIN MEDICAL, HEALTH, FINANCIAL RECORDS
7. APS STAFF MAY PROVIDE THE LAW ENFORCEMENT AGENCY WITH THE ABOVE MATERIALS WHENEVER A SUSPECTED CRIMINAL VIOLATION OCCURS.
8. APS PROCEDURES UNDER NUMBER 6. ABOVE ARE WITHIN THE SCOPE OF APS ACTIVITIES TO CONFIRM ABUSE AND TO ASSURE THE IMMEDIATE AND ONGOING PROTECTION OF THE VICTIM.

II. DEFINITIONS AND LAWS

A. DEFINITIONS OF ELDER AND DEPENDENT ADULT

1. Elder means any person residing in this State age 65 and over [W&IC 15610(a)].
2. Dependent Adult means any person residing in this State age 18 through 64 who has physical or mental limitations which restrict her/his ability to carry out normal activities or to protect her/his rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age [W&IC 15610(b)(1)].

Dependent adult includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code [W&IC 15610(b)(2)]; [includes acute care hospitals, health care clinics, and surgery centers].

B. DEFINITIONS RELATED TO ABUSE

All definitions provided below apply to both elders and dependent adults.

1. Abuse means physical abuse (including sexual abuse), neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services necessary to avoid physical harm or mental suffering [W&IC 15610(g)].

2. Abandonment

Desertion or willful forsaking of an elder or dependent adult by anyone having care or custody under circumstances in which a reasonable person would continue to provide care or custody [W&IC 15610(e)].

3. Isolation

Includes any of the following:

- a. Preventing an elder or dependent adult from receiving mail or telephone calls or contact

with family or friends, or false imprisonment (P.C. Section 236), or physical restraint to prevent meeting with visitors (W&IC 15610(g)(1)(A)(B)(C)(D)).

4. Fiduciary Abuse

A situation in which anyone who has care or custody or is in a position of trust with a suspected victim, takes, secretes, or appropriates money or property, to any use or purpose not in the due and lawful execution of his/her trust (W&IC 15610(f)).

5. Mental Suffering

Deliberately subjecting a person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior (W&IC 15610(p)).

6. Neglect

Negligent failure of any person having the care or custody of an elder or dependent adult to exercise "reasonable person" degree of care; includes failure to:

- a. Assist in personal hygiene, or in provision of food, clothing or shelter;
- b. Provide medical care for physical and mental health needs (except that a person (victim) who voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment shall not be deemed neglected or abused);
- c. Prevent malnutrition;
- d. Protect from health and safety hazards. (W&IC 15610(d)(1)(2)(3)(4)).

7. Physical Abuse

- a. Assault - an unlawful attempt to commit a violent injury on another (P.C.240)

- b. Battery - a willful and unlawful use of force upon another (P.C.242)
- c. Assault with a deadly weapon or force likely to produce great bodily injury (P.C.245)
- d. Unreasonable physical constraint, or prolonged or continual deprivation of food or water (W&IC 15610(c)(4))
- e. Sexual assault, which means any of the following:
 - (1) Sexual battery - touching an intimate part of a person who is institutionalized or unlawfully restrained, against that person's will, for purposes of sexual arousal (P.C.243.4)
 - (2) Rape (P.C.261 and 264.1)
 - (3) Incest (P.C.285)
 - (4) Sodomy (P.C.286)
 - (5) Oral copulation (P.C.288a)
 - (6) Penetration with foreign object (P.C.289)
- f. Use of a physical or chemical restraint, or psychotropic medication under specified conditions (W&IC 15610(c)(6)(A)(B)(C)).

C. DEFINITIONS - OTHER AGENCIES, MISCELLANEOUS

1. Bureau of Medi-Cal Fraud and Patient Abuse
(Office of the Attorney General)

The Bureau implements sections of the federal Social Security Act and is authorized to investigate and prosecute violations of laws pertaining to fraud in the Medi-Cal program. The Bureau also investigates criminal neglect in health care facilities (i.e., nursing homes, acute care hospitals, clinics, and surgery centers). The Bureau has concurrent jurisdiction with local law enforcement agencies. In most cases the Bureau grants first right of refusal to local law enforcement agencies.

2. Clients' Rights Advocate

Person assigned by a Regional Center or Developmental Center (formerly a State Hospital) for insuring that civil, legal, and service rights are available and guaranteed to persons with

developmental disabilities. In State Hospitals still serving the mentally disordered, this function is performed by Patients' Rights Advocates of the Department of Mental Health.

3. Community Care Licensing

The Community Care Licensing Division of the Department licenses residential and day care facilities serving dependent adults and elders. These facilities provide nonmedical care and/or supervision, or protective supervision, to persons unable to care for themselves. Licensing district offices are located throughout the State and are responsible for investigating any complaints about facilities, whether licensed or unlicensed.

4. County Adult Protective Services Agency

A County Welfare Department.

5. Licensing and Certification (of health facilities)

The Licensing and Certification Program of the State Department of Health Services inspects and licenses health facilities including nursing homes, clinics, home health agencies, and adult day health care centers. Licensing offices are located throughout the State and are responsible for the investigation of complaints within the above facilities. If there is reasonable suspicion that criminal abuse/neglect has occurred, referral is made to the local law enforcement agency and the Bureau of Medi-Cal Fraud.

6. Local Law Enforcement Agency

A city police, county sheriff's department or county probation department.

7. Long-term Care Facilities

Skilled Nursing Facility (SNF)
Intermediate Care Facility
Residential Care Facility for the Elderly (RCFE)
Adult Residential Facility (ARF)
Adult Day Health Care Center (ADHC)

8. Long-term Care Ombudsman Coordinator

Individual selected to manage the day-to-day operation of the sub-state ombudsman program.

9. Patients' Rights Advocate

A person who has no direct or indirect clinical or administrative responsibility for the patient, and is responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed [W&IC 15610(q)].

10. Regional Center

An agency providing services to the developmentally disabled which is owned and operated by a private nonprofit corporation under contract to the State of California, administered by the Department of Developmental Services.

11. Sheltered Workshop

An industrial workshop in a State Hospital for the mentally disordered under the Department of Mental Health, or for the developmentally disabled under the Department of Developmental Services.

III. REPORTING OF ABUSE

A. MANDATED REPORTING

1. REPORTERS DEFINED

a. Elder or dependent adult CARE CUSTODIAN:

Employee or administrator of specified public or private facilities when the facilities provide care for elders or dependent adults.

b. HEALTH PRACTITIONER:

Physician, nurse, et cetera.

(These terms, i.e., CARE CUSTODIAN and HEALTH PRACTITIONER, are broadly defined; please see No. B in the Appendix for detailed definitions, or refer to W&IC 15610(h) and (i)).

c. EMPLOYEES of a County APS agency or a local law enforcement agency, except persons who do not work directly with elders or dependent adults as part of their official duties.

2. WHEN TO REPORT

- a. OBSERVED PHYSICAL ABUSE or
- b. OBSERVED A PHYSICAL INJURY WHICH INDICATES THAT PHYSICAL ABUSE HAS OCCURRED or
- c. IS TOLD BY THE SUSPECTED VICTIM THAT SHE/HE HAS BEEN PHYSICALLY ABUSED.

3. REQUIREMENTS

- a. REQUIRED TO REPORT PHYSICAL ABUSE IMMEDIATELY BY TELEPHONE AND TO SUBMIT A WRITTEN REPORT WITHIN TWO WORKING DAYS.
- b. REQUIRED TO GIVE HIS/HER NAME.

4. IMMUNITY

- a. IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR MAKING THE REPORT.

5. PENALTY

- a. FAILURE TO REPORT IS A MISDEMEANOR.

6. REPORTING OF ABUSE OTHER THAN PHYSICAL

- a. MAY REPORT WHEN THEY HAVE KNOWLEDGE OF OR REASONABLY SUSPECT OTHER TYPES OF ABUSE OR THAT THE ABUSED ADULT'S EMOTIONAL WELL-BEING IS ENDANGERED IN ANY OTHER WAY.
- b. REQUIRED TO GIVE NAME.
- c. IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR MAKING THE REPORT.

B. NON-MANDATED REPORTERS

1. Defined.

- a. Any person other than a mandated reporter.

2. Reporting Abuse

- a. Any person who knows, or reasonably suspects any type of abuse may report it.

3. Requirements

- a. Reporter is not required to give his/her name.

4. Immunity

- a. IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR MAKING THE REPORT UNLESS IT CAN BE PROVEN THAT A FALSE REPORT WAS MADE AND THE REPORTER KNEW THAT THE REPORT WAS FALSE.

C. REPORTS MADE TO:

- 1. County APS or a local law enforcement agency when abuse occurs outside a long-term care facility, i.e., abuse occurring in:
 - a. Victim's own home
 - b. Home of family member
 - c. Other private residence
 - d. No established residence
 - e. Hotel or motel
 - f. Room and board residence
 - g. Acute care hospital or clinic
 - h. Social day care center
 - i. Day care center

2. The local long-term care ombudsman program or a local law enforcement agency when abuse occurs in a long-term care facility, i.e.:
 - a. Skilled nursing facility
 - b. Intermediate care facility
 - c. Residential Facility for the Elderly (RCFE)
 - d. Adult Residential Facilities (ARF)
 - e. Adult day health care center

IV. INVESTIGATION RESPONSIBILITY

"'INVESTIGATION' MEANS THAT ACTIVITY NECESSARY TO DETERMINE THE VALIDITY OF A REPORT OF ELDER OR DEPENDENT ADULT ABUSE, NEGLECT, OR ABANDONMENT" (W&IC 15610(m)).

A. COUNTY APS

1. ABUSE OCCURRING OUTSIDE OF LONG-TERM CARE FACILITIES, I.E.:
 - a. VICTIM'S OWN HOME
 - b. HOME OF FAMILY MEMBER
 - c. OTHER PRIVATE RESIDENCE
 - d. NO ESTABLISHED RESIDENCE
 - e. HOTEL OR MOTEL
 - f. ROOM AND BOARD RESIDENCE
 - g. ACUTE CARE HOSPITAL OR CLINIC
 - h. SOCIAL DAY CARE CENTER
 - i. DAY CARE CENTER

B. LOCAL LONG-TERM CARE OMBUDSMAN PROGRAM

1. ABUSE OCCURRING IN LONG-TERM CARE FACILITIES, I.E.:
 - a. SKILLED NURSING FACILITIES
 - b. INTERMEDIATE CARE FACILITIES
 - c. RESIDENTIAL CARE FACILITIES FOR THE ELDERLY
 - d. ADULT RESIDENTIAL FACILITIES
 - e. ADULT DAY HEALTH CARE CENTERS

C. LOCAL LAW ENFORCEMENT AGENCIES

1. INVESTIGATES PHYSICAL ABUSE AND ALL OTHER CONDUCT INVOLVING CRIMINAL ACTIVITY IN AND OUT OF LONG-TERM CARE FACILITIES.
2. THE LAW ENFORCEMENT INVESTIGATION IS A CRIMINAL INVESTIGATION TO GATHER AND ASSESS THE EVIDENCE FOR THE PURPOSE OF POSSIBLE PROSECUTION OF THE SUSPECTED ABUSER.

D. BUREAU OF MEDI-CAL FRAUD AND PATIENT ABUSE. (Office of the Attorney General)

1. INVESTIGATES CRIMINAL NEGLECT AND ABUSE IN NURSING HOMES AND IN HEALTH CARE FACILITIES, I.E., ACUTE CARE HOSPITALS AND HEALTH CLINICS.

2. THE BUREAU INVESTIGATION IS A CRIMINAL INVESTIGATION TO GATHER AND ASSESS THE EVIDENCE FOR POSSIBLE PROSECUTION OF THE SUSPECTED ABUSER.

V. JOINT INVESTIGATIONS

COUNTIES SHOULD ESTABLISH WRITTEN MEMORANDUMS OF UNDERSTANDING (MOU) WITH OTHER INVESTIGATIVE AGENCIES, PARTICULARLY LOCAL LAW ENFORCEMENT AGENCIES AND LOCAL LONG-TERM CARE OMBUDSMAN PROGRAMS, ON PROTOCOLS FOR INVESTIGATIVE ROLES AND RESPONSIBILITIES AND WAYS IN WHICH EACH AGENCY CAN BEST SUPPORT THE OTHER. A CONTACT PERSON FOR EACH AGENCY SHOULD BE ESTABLISHED.

A. LAW ENFORCEMENT

The primary responsibility for conducting criminal investigative interviews and interrogations rests with law enforcement. When conducting interviews law enforcement officers determine if there are additional victims, witnesses, or suspects, establishes the existence of evidence, avoids disclosure of case information to all parties involved, and respects confidentiality whenever possible.

Whenever available, APS staff may provide the local law enforcement agency (and the Bureau of Medi-Cal Fraud when suspected abuse occurs in a health care facility) with:

1. Written statements or signed affidavits by:
 - a. Reporting party
 - b. Victim
 - c. Suspected abuser
 - d. Neighbors/relatives
 - e. Caretakers
 - f. Other professionals
2. Narrative and/or copy of APS investigative report describing:
 - a. Condition of victim, injuries, physical and mental state
 - b. Living environment
 - c. Observations: visual, odors, sounds, food conditions, health and safety hazards
3. Information regarding suspected abuser:
 - a. Identity or identifying information
 - b. Possible location

- c. Background
 - d. Profile
- 4. Physical evidence:
 - a. Photographs of victim and surroundings
- 5. Documentary evidence
 - a. Medical information: lab reports, medical reports and history
 - b. Substance abuse/addiction
 - c. Nursing notes/charts
 - d. Death certificate
 - e. Coroner's report
- 6. Non-medical: (obtain victim's approval to share information)
 - a. Financial statements
 - b. Bank statements
 - c. Bank books

B. LOCAL LONG-TERM CARE OMBUDSMAN PROGRAM

- 1. Ombudsman may request APS assistance in abuse investigation in long-term care facility.
- 2. Joint investigations may occur in a reported room and board residence which actually turns out to be a board and care facility.
- 3. APS may investigate abuse of a long-term care facility resident who is abused on a visit outside the facility.

C. OTHER AGENCIES

- 1. The Bureau of Medi-Cal Fraud and Patient Abuse investigates allegations of abuse and neglect occurring in health care facilities (acute care hospitals, clinics).
- 2. Regional Centers for the Developmentally Disabled should be contacted to assist in investigation of developmentally disabled persons. Either the Client Program Coordinator (CPC) or the Client's Rights Advocate would be the appropriate contact persons.

3. County Mental Health offices should be contacted to assist in investigation of mentally disabled persons. The Patient's Rights Advocate would be the appropriate contact person.
4. The Community Care Licensing agency must be notified of abuse in residential facilities (board and care homes) whether the facility is licensed or unlicensed. The licensing agency will investigate such abuse from the perspective of violations of licensure rules and laws.

VI. CONFIDENTIALITY

A. Reporters of Abuse

The identity of reporters of elder and dependent adult abuse is confidential and may be disclosed to investigative agencies only as follows:

1. Among adult protective services agencies, SDSS, local law enforcement agencies, county probation departments, long-term care ombudsman coordinators, licensing agencies, the Bureau of Medi-Cal Fraud, or to counsel representing these agencies;
2. To the district attorney in a criminal prosecution;
3. When persons reporting waive confidentiality;
4. By court order.

B. Suspected Victims of Abuse

Names of suspected elder and dependent adult abuse victims and information contained in the abuse reports may be disclosed only as follows:

1. All of the above under A. 1, 2, 4;
2. When the victim waives confidentiality;
3. To public or private agencies available to assist victims of abuse and to which a victim is referred if the County APS agency cannot resolve the immediate and/or long-term care needs of the victim;
4. To persons or agencies with whom investigations of abuse are coordinated as indicated in these minimum guidelines, e.g., Regional Centers, Long-Term Care Ombudsman programs, licensing agencies.

NOTE: IN AN OPINION BY THE STATE ATTORNEY GENERAL DATED NOVEMBER 15, 1985, UNDER THE OLDER AMERICANS ACT THE IDENTITY OF AN ELDER VICTIM OF ABUSE (age 60 or over), WHO IS A RESIDENT OF A LONG-TERM CARE FACILITY MAY NOT BE DISCLOSED BY THE LONG-TERM CARE OMBUDSMAN UNLESS THE VICTIM HAS GIVEN CONSENT OR A COURT ORDER PERMITS SUCH DISCLOSURE.

VII. RESPONSE TO REPORT OF ABUSE - EVALUATION

A. INITIAL RECEIPT OF REPORT OF ABUSE

1. REAFFIRM THAT THE REPORT IS AN APPROPRIATE REFERRAL TO THE APS AGENCY AND DETERMINE THE HEALTH AND SAFETY FACTORS AND IMMEDIATE RISK TO THE SUSPECTED VICTIM.

2. COMPLETE SOC 341 (REPORT OF SUSPECTED ELDER AND DEPENDENT ADULT ABUSE)

- a. VICTIM INFORMATION:

- NAME, AGE, PHYSICAL/MENTAL CONDITION
- ADDRESS AND TELEPHONE NUMBER
- PRESENT LOCATION
- POTENTIAL RISK TO VICTIM

- b. REPORTING PARTY:

- NAME/TITLE, RELATION TO VICTIM
- WHERE TO CONTACT: ADDRESS AND TELEPHONE
- OBSERVATIONS, BELIEFS, OTHER WITNESSES
- PERSON RESPONSIBLE FOR VICTIM

- c. ABUSE INCIDENT:

- TYPE OF ABUSE
- DATE(S), TIME(S) OF ABUSE
- EXTENT, SEVERITY OF ABUSE

- d. SUSPECTED ABUSER

- NAME AND ADDRESS
- RELATIONSHIP TO VICTIM
- INFORMATION FOR IDENTIFICATION

3. DETERMINE PRIORITY OF RESPONSE BASED ON CURRENT PHYSICAL AND MENTAL CONDITION OF THE VICTIM AND POTENTIAL RISK TO THE VICTIM.

4. COORDINATE RESPONSE WITH OTHER PERTINENT AGENCIES (IS IMMEDIATE RESPONSE BY LAW ENFORCEMENT AGENCY A NECESSITY?)

B. Obtain Additional Information From Reporter

1. Concerning Victim:

- a. Physical/mental health, competency
- b. Social and familial support system
- c. Degree of dependence on others for care
- d. Conservatorship or representative payee?
- e. Known to other agencies?

2. Concerning Abuse Incident:

- a. History of the abuse
- b. Reporter's assessment of situation and reasons for believing as he/she does
- c. Medical or other intervention needed
- d. Have other agencies been contacted?
- e. Any actions reporter has taken in past to alleviate abuse situation?

3. Information On Danger Indicators As Potential Risk For APS Investigator

- a. Weapons in the home?
- b. Volatile behavior exhibited by suspected abuser?
- c. Substance abuse indicators?
- d. History of physical or verbal threats by suspected abuser?
- e. Known history of assaultive behavior by suspected abuser?
- f. Will abuser be present in the victim's home?
- g. Potential for attack by animals in home?
- h. High crime area?

NOTE: IF YOU ARE CONTACTED BY A MANDATED REPORTER OF PHYSICAL ABUSE, YOU MUST ADVISE THE REPORTER OF HER/HIS RESPONSIBILITY TO COMPLETE THE SOC 341 AND SEND IT TO THE COUNTY ADULT PROTECTIVE SERVICES AGENCY WITHIN TWO WORKING DAYS. THE REPORTER MAY KEEP THE THIRD PAGE OF THE FORM AS A COPY.

C. Additional Considerations

1. When the reporter is the alleged victim:

- a. Is caller able to clearly describe the abuse?
(Reassure that the call is to the right place)
- b. Establish specific information related to the abuse

- c. Caller may be reluctant to discuss for fear of retaliation
- d. Evaluate whether retaliation is a realistic possibility and what would be its form, and would the retaliation be likely to continue in any case
- e. If needed, discuss alternatives for protection of the caller
- f. WHAT DOES THE CALLER WANT APS TO DO?
- g. Is a face-to-face contact urgently needed to obtain basic information concerning the abuse?

2. When Reporter is a Relative, Friend, or Neighbor

- a. What is reporter's relationship to abused?
- b. Assess intent behind report
- c. Obtain names and relationships of other witnesses if not initially obtained
- d. Has reporter informed anyone else, or any other agency including law enforcement?
- e. Has reporter previously reported this abuse incident to APS or any other agency?
- f. Is reporter concerned about family's reaction?
- g. Is reporter afraid of possible retaliation to self or to the victim?
- h. Does reporter object to disclosure of his/her name to other than official agencies?

3. When Reporter is a Mandated Reporter

- a. What is professional relationship of reporter to the victim?
- b. If need be, remind reporter of legal protection under reporting law, i.e., immunity from civil and criminal liability
- c. Does reporter object to disclosure of his/her name to other than official agencies?

NOTE: CHECK WITH MORE THAN ONE SOURCE FOR INFORMATION DEPENDING ON NATURE OF REPORT; ADDITIONAL SOURCES SHOULD BE NEUTRAL PARTIES, IF POSSIBLE.

D. OBSERVE CROSS-REPORTING REQUIREMENTS

1. To Local Law Enforcement Agency:
 - a. Immediately telephone report of physical abuse followed by a written report (SOC 341) within two working days
 - b. Only a written report is required to be sent in cases of abuse other than physical abuse
 - c. Reports involving criminal activity other than physical abuse may be immediately reported
2. To Health Licensing and Community Care Licensing
 - a. Report by telephone as soon as possible when a report of abuse occurring in a long-term care facility is received (nursing homes and residential care facilities)
3. To Professional Licensing Boards
 - a. Report by telephone immediately when it is confirmed that abuse was committed by a licensed health practitioner
4. Other Public Agencies
 - a. To any public agency given investigative responsibility in that jurisdiction of cases, every known or suspected instance of physical abuse, followed by a written report within two working days
5. Bureau of Medi-Cal Fraud and Patient Abuse
Office of the Attorney General
 - a. Any reports of abuse occurring in a health care facility, i.e., acute care hospitals and health clinics

E. BACKGROUND INVESTIGATIVE CHECK

Check with other agencies as appropriate to obtain background information on the victim and/or abuser(s) and to determine that agency's possible involvement in the potential investigation if needed.

1. Law enforcement agencies, including police, sheriff's, probation and parole departments.

2. Regional Centers for the developmentally disabled.
3. Mental Health agencies.
4. Independent Living Centers.
5. Long-term care ombudsman coordinator if suspected victim was a previous resident in a long-term care facility.
6. Local Multipurpose Senior Services Program (MSSP) which services "at risk" elderly Medi-Cal recipients age 65 or over.
7. Local "Linkages" program site, a State Department of Aging program which services "at risk" adults (age 18+) regardless of income.
8. Local Adult Day Health Care (ADHC) center, a State Department of Aging program which serves frail elderly and other physically or mentally impaired adults.
9. Local social day care center, or adult day care center.

 | ESTABLISH THAT IT IS MORE LIKELY THAN NOT THAT AN ABUSE |
HAS OCCURRED AND THAT AN INVESTIGATION APPEARS WARRANTED.

VIII. INVESTIGATION ACTIVITIES (Optional Use of Form SOC 343)

IMPACT OF INVESTIGATION

EVERY APS SOCIAL WORKER SHOULD BE AWARE THAT THE SCOPE OF ACTIVITIES UNDERTAKEN DURING THE INVESTIGATION, COUPLED WITH THE ACCURACY AND THOROUGHNESS OF THE INVESTIGATIVE REPORT, WILL HAVE A CRUCIAL BEARING ON THE PROTECTION OF THE VICTIM.

DOCUMENTATION AND SECURING OF EVIDENCE IS CRITICAL IF IT IS DETERMINED BY PROPER AUTHORITY(IES) THAT LEGAL ACTION AGAINST THE SUSPECTED ABUSER IS WARRANTED.

A. ACTIVITIES

1. OPTIONS FOR INITIAL CONTACTS

- a. TELEPHONE REPORTING PARTY
- b. TELEPHONE VICTIM
- c. MAKE ANNOUNCED OR UNANNOUNCED VISIT FOR FACE-TO-FACE INTERVIEW WITH VICTIM (Caution: This should be done carefully if victim fears retaliation and in event abuser is present.)
- d. CONTACT COLLATERAL AGENCIES/PERSONS
- e. COORDINATE RESPONSE WITH OTHER AGENCIES
- f. SEEK LAW ENFORCEMENT ASSISTANCE

2. INTERVIEWS

CONDUCT SEPARATE FACE-TO-FACE INTERVIEWS WITH SUSPECTED VICTIM AND SUSPECTED ABUSER
(consider use of a neutral setting if appropriate, e.g., doctor's office, clinic, senior center, park, et cetera.)

a. SUSPECTED VICTIM

- 1) Explain and reassure victim of APS role
-Describe services and helping role-
- 2) Allow victim to describe abuse in own words
- 3) Accept and use victim's terminology
- 4) Be non-judgmental and do not express moral outrage

- 5) Establish dates, time frames for current and prior abuse
- 6) RECORD ALL DATES
 - If some dates are uncertain, record date when abuse initially began and specify any other known dates of abuse
 - If more than one abuse occurred, establish and record date for each type of abuse
- 7) Obtain signed statement or have victim sign worker prepared paraphrased statement, if possible

b. OTHER CONSIDERATIONS - VICTIM

- 1) Evaluate imminent danger of continued abuse, intimidation, retaliation
- 2) Whether physical environment presents an immediate threat to victim's health and safety
- 3) Mental capacity of victim
- 4) Whether there is a relative or responsible person willing or capable of protecting the victim
- 5) Existence of a conservatorship
- 6) Applicability of W&IC Section 5150.
(Involuntary detention for psychiatric evaluation by law enforcement, medical doctor, or designated mental health worker)
- 7) Applicability and availability of shelter

c. IDENTIFY AND DOCUMENT INDICATORS OF ABUSE

- 1) Physical: (Check W&IC 15610)
 - Bruises, abrasions
 - Cuts, lacerations
 - Swelling, fracture(s)
 - Sexual Exploitation
 - Physically restrained
 - Prolonged deprivation of food or water
 - Improper administration of medicine
- 2) Neglect:
 - Improper personal hygiene, e.g., skin disorders or rashes
 - Unbathed
 - Torn or unwashed clothing

- Inadequate heating
- Unsanitary conditions
- Unsafe housing
- Safety hazards
- Insufficient quantity or quality of food
- Dehydration

RECORD AND DESCRIBE:

- OWN OBSERVATIONS OF PHYSICAL ABUSE/NEGLECT
- ENVIRONMENT: VISUAL, ODORS, SOUNDS

TAKE PHOTOGRAPHS:

- VICTIM AND/OR LIVING ENVIRONMENT
- AT LEAST 3 PHOTOS OF PHYSICAL ABUSE INDICATORS AND/OR NEGLECT: CLOSE-UP, IMMEDIATE SURROUNDINGS, AND WIDER VIEW.

OBTAIN DOCUMENTS:

- GET VICTIM'S CONSENT TO OBTAIN DOCUMENTS
- MEDICAL AND HOSPITAL RECORDS AND REPORTS
- RECORDS/REPORTS FROM COLLATERAL AGENCIES

3) Abandonment:

- Victim left alone for long periods by caretaker
- And victim unable to provide basic necessities of daily living

4) Isolation:

- Victim has little or no communication outside the home
- Victim receives no correspondence
- Victim has no visitors
- Victim has no telephone calls

5) Mental Suffering:

- Victim fearful, agitated
- Emotionally distressed, withdrawn
- Angry, confused
- Sleeping/eating/speech disorders
- Depression, helplessness

6) Fiduciary Abuse:

- Misuse or unaccounting of funds
- Is another person legally responsible for victim's personal property?
- Is there a representative payee or conservator?
- Irregularity or unusual activity in bank account(s)
- Reluctance to spend money on care of victim
- Numerous unpaid bills when someone else is responsible
- Recent change of title of house when victim is not capable of understanding
- Recent changing of will when victim incapable
- Caregiver relies on victim for support
- Who cashes victim's checks?

SECURE DOCUMENTS RELATED TO ABUSE:

- OBTAIN NEEDED CONSENT FORM SIGNED BY VICTIM FOR ACCESS TO FINANCIAL REPORTS, BANK BOOKS, BANK STATEMENTS

OBTAIN DOCUMENTS:

- RECORDS/REPORTS FROM COLLATERAL AGENCIES

d. SUSPECTED ABUSER

1) Assess Potential Danger to Social Worker

- Consider background of suspect:
 - Criminal activity
 - Known to be assaultive
 - Evaluate reporter's statements for possible risk

2) Options for Initial Contact

- Face-to-face interview
- Interview between suspect and social worker only
- Team interview accompanied by another social worker
- Joint interview with other agency representative
- Joint interview with law enforcement officer

(3) Interview considerations

- Attempt to gain rapport with suspect
- Encourage suspect to discuss incident in own words
- Use open questions to explore possible reasons for abuse, e.g., dependency
- Obtain suspect's statements/reaction to the abuse
- Does suspect admit or deny responsibility for abuse?
- Note statements made that are or are not consistent with other findings and evidence
- Compare and corroborate statements with those of victim, reporter, and other agencies

e. OTHER INTERVIEWS

1) Interview Considerations

- Sequence of witness interviews
- Witness relationship to victim/abuser
- Reliability of witness
- Motivation of witness
- Possible fear of witness to tell all

2) Interview Process

- Obtain information without unnecessarily divulging reason for inquiry; protect confidentiality within the limits of statute (see Section VII on Confidentiality)
- Interview persons knowledgeable of abuse, i.e., the reporter, family members, friends, caretaker
- Record statements with reported dates of occurrences - use methods of associating other dates and/or events to help recollect dates of abuse
- Obtain signed written statements or worker write paraphrase and have witness sign, if possible

3. COORDINATION

Contact other agencies which may have known victim, e.g., mental health, hospital, public conservator, geriatric or aging program services

- a. Reasons victim is known to agency;
- b. Indications of previous abuse;
- c. Copies of available documentation;
- d. Copies of medical reports.

4. ASCERTAIN RISK TO VICTIM

- a. Attempt to corroborate statements by victim and suspected abuser by use of:
 - 1) Statements by witnesses, reporting party
 - 2) Evidence of abuse
 - 3) History of prior family/social problems
 - 4) Prior criminal activity
 - 5) Other agency reports
- b. Determine type and severity of abuse
- c. Determine approximate duration and/or frequency of abuse
- d. Determine whether abuse is likely to continue without intervention
- e. Determine appropriate intervention to protect victim
- f. Is victim able to remain safely in own home?
- g. Is victim willing to accept services?
- h. Is it necessary to protect client without his/her consent (Sec. 2250 Probate Code)? (Person is gravely disabled due to mental disorder, or is unable to provide food, shelter, and clothing)?

5. DOCUMENTATION

- a. Assemble all information collected and review for adequate documentation, i.e.:

- Signed statements and/or affidavits of reporter, victim, suspected abuser, witnesses if any
- Investigating social worker written observations of abuse, date(s)/time(s) of occurrence, name and identifying information of suspected abuser and possible reason(s) for abuse, if known
- Photographs of victim, physical abuse and/or neglect and surroundings (at least three photos)
- Medical/hospital/clinic records
- Records/reports from collateral agencies
- Bank statements, deposit books, legal papers related to fiduciary abuse
- Victim's signed consent to obtain confidential information, if needed
- Prepare package of above documented information for law enforcement agency for criminal investigation, if appropriate

- b. Complete form SOC 341, Report of Suspected Abuse which can be used as the front page of investigation documents. Form SOC 343, Investigation, may be used to record investigation information.

6. SEEK LAW ENFORCEMENT ASSISTANCE

- a. When health and safety of victim is at risk
- b. When investigating a situation which may be potentially dangerous for the social worker, e.g., there may be reason to believe drugs, weapons are present and/or abuser may be physically assaultive
- c. When report of physical abuse is received and evidence indicates a possible crime has been committed
- d. When evidence is accumulated that the victim may be in a continuing dangerous situation
- e. When there is a possible law violation, not only in cases physical abuse, but for other criminal activity
- f. When the abuser obstructs removal of the voluntary client

- g. To obtain a court order for entry into a victim's home
- h. To request a temporary restraining order (TRO) against the abuser
- i. When the mental health agency cannot respond if the victim is a mentally disordered abused person or the abuser requires evaluation and treatment (W&IC Section 5150)
- j. When physical/health status reveal the need for emergent or institutional care (i.e., cuts, bruises, open sores, comatose, vomiting, convulsions, etc.)

IX. INVESTIGATION COMPLETED

- A. Refer victim for needed health and/or social services.
- B. If not already accomplished, process evidence, e.g., photographs, reports/statements from witnesses, medical and police reports, case records, consultation with health practitioners, care custodians, lawyers, bankers. Objective and thorough documentation is vital.
- C. Provide complete information and documentation to investigating law enforcement agency for possible prosecution of abuser, when appropriate.
- D. Consider direct referral to Office of District Attorney for prosecution when local law enforcement agency refuses to investigate for possible prosecution.
- E. Complete Form SOC 341.
- F. Complete Form SOC 343 or other investigation form.
- G. Cross-report to appropriate Health Licensing Board when abuser is a licensed health practitioner.
- H. Use completed SOC 341 forms for compiling of data for completion of monthly reports (SOC 340) to SDSS Statistical Services.
- I. Retain Form SOC 341 and case records are to be retained for at least three years in accordance with W&IC 10851.